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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 MUHAMMED TILLISY,

11 Petitioner,

12 v.

13 MARION FEATHER,

14 Respondent.

CASE NO. C11-1858 MJP

ORDER ON OBJECTIONS TO
REPORT & RECOMMENDATION

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16 The Court, having received and reviewed:

17 1. Report and Recommendation (Dkt. No. 7)

18 2. Objections to Report and Recommendation (Dkt. No. 16)

19 and all attached declarations and exhibits, makes the following ruling:

20 IT IS ORDERED that the Report and Recommendation is ADOPTED and APPROVED.

21 IT IS FURTHER ORDERED that Petitioner's petition for habeas corpus is DENIED and
22 this matter is DISMISSED with prejudice.
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1 IT IS FURTHER ORDERED that the remainder of Petitioner's pending motions in this
2 matter, including his application to proceed *in forma pauperis* and his motion for preliminary
3 injunction, are DENIED as moot.

4 **DISCUSSION**

5 Petitioner has filed a proposed §2241 habeas petition which argues that he was
6 improperly removed from a community-based center based on a disciplinary hearing that found
7 him guilty of a violation. Before petitioning for habeas relief, federal prisoners are required to
8 exhaust their administrative remedies through the Bureau of Prisons (BOP). Fraley v. U.S.
9 Bureau of Prisons, 1 F.3d 924, 925 (9th Cir. 1993). Petitioner has failed to do so, and in his
10 pleadings alleges that any attempt to exhaust his administrative remedies would be futile because
11 of his anticipated February 2012 release date. Dkt. No. 1-1, Habeas Petition, pp. 8-9.

12 On this basis, the Magistrate Judge recommended that Petitioner's habeas petition be
13 dismissed without prejudice. Although he made no showing in his petition of the futility of
14 exhausting his administrative remedies, in his objections Petitioner alleges (1) that the BOP will
15 not send a "BP-10" form to the institution in which he is currently housed and thus he cannot
16 pursue further administrative remedies, and (2) that upon attempting to file for a remedy in his
17 current facility, he was told that "BOP regulations don't apply while in 'CCA'." Dkt. No. 16,
18 pp. 1-2. The Court notes that, while Petitioner alleges that "[t]his response was filed on record"
19 (Id.), his pleadings are unaccompanied by any documentary proof (or even a declaration under
20 penalty of perjury).

21 Regardless of the procedural defects from which this petition suffers, the Court notes an
22 even more fatal substantive flaw. Petitioner moves this Court to overturn the BOP's decision to
23 transfer him to another facility. The Court has no power to dictate the placement of prisoners to
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1 BOP. Under 18 U.S.C. § 3621(b), the BOP has the authority to decide where a prisoner is
2 imprisoned. “[A] district court has no power to dictate or impose any place of confinement for
3 the imprisonment portion of the sentence. Rather, the power to determine the location of
4 imprisonment rests with the Bureau of Prisons.” United States v. Serafini, 233 F.3d 758, 778 n.
5 23 (3rd Cir. 2000). Even had Petitioner exhausted his administrative remedies, the Court has no
6 authority to grant the relief he seeks.

7 Petitioner may only appeal this denial of his § 2254 petition if he obtains a certificate of
8 appealability. A certificate of appealability may issue only where a petitioner has made “a
9 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). Satisfying
10 this standard requires Petitioner to “demonstrat[e] that jurists of reason could disagree with the
11 district court’s resolution of his constitutional claims or that jurists could conclude the issues
12 presented are adequate to deserve encouragement to proceed further.” Miller-El v. Cockrell, 537
13 U.S. 322, 327 (2003). Pursuant to this standard, Petitioner is not entitled to a certificate of
14 appealability, and this order will so reflect.

15 **Conclusion**

16 Petitioner seeks habeas relief when he has not exhausted his administrative remedies (or
17 provided admissible proof that exhaustion or attempted exhaustion is futile), nor is this Court
18 empowered to grant the relief he seeks in any event. His petition will be DISMISSED with
19 prejudice. No certificate of appealability will issue in regard to this ruling.

20 Petitioner has a number of additional motions pending in this matter, including an
21 application to proceed *in forma pauper* and a motion for a preliminary injunction. All remaining
22 motions in this case are DENIED as moot.

1 The clerk is ordered to provide copies of this order to Petitioner and to all counsel.

2 Dated: December 22, 2011.

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5 Marsha J. Pechman
6 United States District Judge
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